

Judge Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

J.I.,

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

NO. C06-5674RJB

**STIPULATION AND
PROTECTIVE ORDER**

Note on Motion Calendar:
July 19, 2007

Plaintiff, by and through his attorneys, Michael T. Pfau and Steven T. Reich, and defendant United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Philip H. Lynch, Assistant United States Attorney for said District, stipulate and agree to the following:

- a. This Stipulation and Order is agreed to and entered pursuant to Fed. R. Civ. P. 26(c), which provides for the issuance of protective orders limiting the disclosure of privileged and confidential documents and information in appropriate circumstances, and 5 U.S.C. §§ 552a(b)(11) and (g)(1), which provide an exception to the Privacy Act of 1974 for documents and information released pursuant to a court order.
- b. This Stipulation and Order arises from an action brought under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680 (hereafter cited as FTCA"), in which plaintiff alleges that two Army Catholic Chaplains

1 sexually abused him while he was a minor.

- 2 c. Pursuant to the court's Order Denying Motion to Dismiss, Dkt. 16, at 8-
3 9, the parties have engaged in discovery on the issue of accrual of the
4 plaintiff's FTCA claim.
- 5 d. Plaintiff's counsel requested the United States produce the personnel files
6 of Colonel John Murphy and Colonel Reinard Beaver, the Army Chaplains
7 who allegedly were involved in the sexual abuse of plaintiff. The Army has
8 recently located the requested personnel files. The disclosure of such
9 documents are normally protected from release by the Privacy Act of 1974,
10 5 U.S.C. § 552a.
- 11 e. While disclosure of such documents and records ordinarily is prohibited in
12 civil litigation, the Privacy Act provides, as an exception, that such records
13 may be released "pursuant to the order of a court of competent jurisdiction."
14 5 U.S.C. § 552a(b)(11). An order of this Court therefore would provide a
15 basis for release of the requested documents and records pursuant to the
16 Privacy Act and Fed. R. Civ. Pro. 26(c), as well as insulate the defendant
17 from potential liability for improper disclosure. *See* 5 U.S.C. § 552a(g)(1).
18 It should be noted by the court that Chaplain John Murphy has died and his
19 records would normally not be protected by the Privacy Act. However, his
20 personnel records contain personal information about a number of other
21 individuals mandating submission of this Stipulation to safeguard his
22 records as well as the personnel records of Colonel Beaver.
- 23 f. The purposes of this Stipulation and Order include protecting the
24 confidentiality of certain documents and information, and ensuring that the
25 parties can obtain and pursue discovery with a minimum of delay and
26 expense. Accordingly, the parties, subject to the court's approval, stipulate
27 and agree that the procedures set out in the ensuing Order shall be followed
28 whenever counsel for defendant believes that formal or informal discovery

1 in this case, in whatever form, may reveal or has revealed documents or
2 information that may be protected by the Privacy Act.

3 EXECUTED this 19th day of July, 2007.
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5 JEFFREY C. SULLIVAN
6 United States Attorney

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON &
DAHEIM L.L.P.

7
8 By /s/ Philip H. Lynch
9 Philip H. Lynch, WSBA No. 91005
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By /s/ Michael T. Pfau
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12 By /s/ Steven T. Reich
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14 Attorney for Plaintiff
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PROTECTIVE ORDER

The parties having stipulated, it is hereby ordered as follows:

1. Notwithstanding any other provision of the Privacy Act, 5 U.S.C. § 552a, et seq., the Department of the Army, its officers, agents, employees and representatives (including, but not limited to, the United States Attorney's Office for the Western District of Washington) are hereby authorized under 5 U.S.C. § 552a(b)(11) to release any and all information contained in any system of records maintained by the Department of the Army which constitutes the last known personnel records of Colonel John Murphy and Colonel Reinard Beaver. .

2. The Department of the Army, its officers, agents, employees and representatives are hereby relieved of any obligation under 5 U.S.C. § 552a© to make or keep any accounting of any disclosure or, under 5 U.S.C. § 552a(e)(8), to provide notice of any disclosure to any individual, made under the authority of this order.

3. The purpose of this order is to enable the Department of the Army, its officers, agents,

1 employees and representatives to provide information which they might otherwise be
2 prohibited from disclosing under the Privacy Act, 5 U.S.C. § 552a, and as to which they
3 might otherwise incur criminal and civil liability for having disclosed. However, it is
4 understood and agreed that this order does not constitute an agreement or a ruling that any
5 particular evidence is discoverable, relevant or admissible in this matter, nor may this order
6 be construed to compel any action on the part of the Department of the Army or any of its
7 officers, agents, employees or representatives.

8 4. All documents from the personnel records of Colonel John Murphy and Colonel
9 Reinard Beaver shall be subject to this Order, and shall be used solely in connection with this
10 lawsuit. No document or information contained in Colonel Murphy and Colonel Beaver's
11 personnel records may be released or disclosed to any person other than:

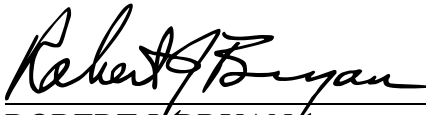
- 12 i. plaintiffs' counsel in this action;
- 13 ii. secretaries, paralegal assistants, and other employees and agents of
14 plaintiffs, counsel who are engaged in assisting plaintiffs' counsel in
15 the preparation of this action;
- 16 iii. outside consultants and experts consulted or retained for the purpose of
17 assisting in the preparation of this action; and
- 18 iv. any other person mutually authorized by all counsel to examine such
19 materials.

20 5. Any person having access to the personnel files of Colonel Murphy and Colonel
21 Beaver shall be informed that the personnel files are confidential and subject to a non-
22 disclosure Order of the Court. No such person shall release or disclose those materials to any
23 person other than those specifically identified in paragraph 4, above, without further order of
24 the Court or stipulation of the parties.

25 6. Within sixty days of the conclusion of this litigation, including any appeals
26 therefrom, any originals or reproductions of any confidential documents provided to
27 plaintiff's counsel pursuant to this Order shall be destroyed by plaintiff's counsel or
28 returned to the custody of counsel for the defendant. If the documents are destroyed,

1 plaintiff's counsel shall so notify defendant's counsel in writing of the destruction.
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3 DATED this 23rd day of July, 2007.
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8 ROBERT J. BRYAN
9 United States District Judge

10 Presented by:
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12 By /s/ Philip H. Lynch
13 Philip H. Lynch, WSBA No. 91005
14 Assistant United States Attorney
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